IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.346 OF 1989

Vinayak Waman Kulkarni ...Appellant
Vs.
The State of Maharashtra
through
Special Land Acquisition Officer ...Respondent

Ms Nayana Thatte for the Appellant.
Mr Y.M. Nakhawa, A.G.P. for the Respondent.

CORAM : ABHAY S. OKA, J.
DATE : APRIL 25, 2006.

JUDGMENT:

1. Heard the learned Advocate appearing for the Appellant and Shri Nakhawa, learned A.G.P. for the State.

2. The challenge in this Appeal is to the Judgment and Award dated 29th September, 1987 under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act). The Appeal relates to land situated at village Akola, Taluka Mangalwedha, District Solapur. The acquired land which admeasures two hectares 64 Ares together with potkharaba of 5 Ares was notified for acquisition on 10th July, 1980 by issuing notification under section 4 of the said Act. The acquisition was for the purpose of work of Ujani High Bank Canal. Award was made on 25th October, 1982. The Land Acquisition Officer awarded compensation at the rate of Rs.5,500/- per hectare. The claim in the reference was for

additional compensation of Rs.20,000/-. The Reference Court dismissed the claim for enhancement. However, benefit of solatium under section 23(2) and benefit of interest under section 28 of the said Act was granted.

3. The learned Advocate appearing for the Appellant pointed out that while making the award the Land Acquisition Officer divided the acquired lands into three categories- inferior jirayat, superior jirayat and bagayat. She submitted that the acquired land has been wrongly treated as a Jirayat land. The learned Advocate pointed out that the evidence led by the claimant shows that the acquired land was bagayat land and was irrigated on canal Vasant Bandhara. She submitted that higher compensation has been awarded for said bagayat land and therefore, the Appellant is entitled to enhancement in the market value. The learned A.G.P. has supported the impugned judgment and award.

4. I have considered the submissions. The Appellant examined himself as the only witness. According to the Appellant the land was irrigated from the water which was received from Vasant Bandhara which is an old water tank. In the cross-examination the Appellant stated that he was taking crops like

jawar, bajara, hulga on the natural rain water. He stated that groundnut, sugar-cane, chilli are treated as bagayat crops. He has candidly admitted that he has not cultivated sugar-cane, groundnut and chilli in the acquired land. He admitted that there was no entry in the 7/12 extract to show that he had cultivated wheat crop on the acquired land. He has stated that he was not aware as to what were the rates of land in the village at the relevant time.

5. Deposition of the Appellant is the only evidence on record of the Reference Court. On plain reading of the said deposition it is obvious that the Appellant failed to prove that the acquired land is a bagayat land. His evidence shows that the Appellant was taking jirayat crops all along. In the circumstances, the Reference Court held that the Appellant has not proved that the acquired land was a bagayat land. The Appellant has not produced any evidence in the form of sale instances or an opinion of an expert to show that market value of the land which was awarded by the Land Acquisition Officer was on the lower side. Thus, the Appellant has not discharged the burden of proving that the compensation awarded is on lower side.

6. Hence, there is no merit in the Appeal and the same is dismissed with no orders as to costs.

JUDGE